

1 Honorable Barbara J. Rothstein
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 GLASBOX, INC., a Washington corporation,
10 Plaintiff and Counter-defendant,
11 v.
12 BLUE WATER GLASS, INC., a Michigan
13 corporation,
14 Defendant and Counterclaimant.

NO. 2:23-cv-00419-BJR

**AGREEMENT REGARDING
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION AND
ORDER**

15 Plaintiff – Counter Defendant Glasbox, Inc. and Defendant – Counter Plaintiff Blue
16 Water Glass, Inc. (collectively, “the parties”) hereby stipulate to the following provisions
17 regarding the discovery of electronically stored information (“ESI”) within each party’s
18 possession, custody, or control in this matter:

19 **A. General Principles**

20 1. An attorney’s zealous representation of a client is not compromised by
21 conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation
22 to cooperate in facilitating and reasonably limiting discovery requests and responses raises
23 litigation costs and contributes to the risk of sanctions.

24 2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R.
25 Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further
26 the application of the proportionality standard in discovery, requests for production of ESI and

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1 related responses should be reasonably targeted, clear, and as specific as possible. This
2 agreement is intended to assist the parties in identifying relevant, responsive information that
3 has been stored electronically and is proportional to the needs of the case. The agreement does
4 not supplant the parties' obligations to comply with Fed. R. Civ. P. 34.

5 **B. ESI Disclosures**

6 Within 30 days after entry of this Order, or at a later time if agreed to by the
7 parties, each party shall disclose:

8 1. Custodians. The custodians most likely to have discoverable ESI in their
9 possession, custody or control, which shall be no less than three (3) custodians. The custodians
10 shall be identified by name, title, connection to the instant litigation, and the type of the
11 information under his/her control.

12 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g.
13 shared drives, servers, etc.), if any, likely to contain discoverable ESI.

14 3. Third-Party Data Sources. A list of third-party data sources, if any, likely
15 to contain discoverable ESI (e.g. third-party email and/or mobile device providers, "cloud"
16 storage, etc.) and, for each such source, the extent to which a party is (or is not) able to preserve
17 information stored in the third-party data source.

18 4. Inaccessible Data. A list of data sources, if any, likely to contain
19 discoverable ESI (by type, date, custodian, electronic system or other criteria sufficient
20 to specifically identify the data source) that a party asserts is not reasonably accessible
21 under Fed. R. Civ. P. 26(b)(2)(B). (Section (C)(3) below sets forth data sources and ESI
22 which are not required to be preserved by the parties. Those data sources and ESI do not need
23 to be included on this list.)

24 **C. Preservation of ESI**

25 The parties acknowledge that they have a common law obligation, as expressed in Fed.
26 R. Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information

1 in the party's possession, custody or control. With respect to preservation of ESI, the parties
2 agree as follows:

3 1. Absent a showing of good cause by the requesting party, the parties shall not
4 be required to modify the procedures used by them in the ordinary course of business to back-
5 up and archive data; provided, however, that the parties shall preserve all discoverable ESI in
6 their possession, custody or control.

7 2. All parties shall supplement their disclosures in accordance with Fed. R. Civ.
8 P. 26(e) with discoverable ESI responsive to a particular discovery request or mandatory
9 disclosure where that data is created after a disclosure or response is made (unless excluded
10 under (C)(3) or (D)(1)-(2) below).

11 3. Absent a showing of good cause by the requesting party, the following
12 categories of ESI need not be preserved:

- 13 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 14 b. Random access memory (RAM), temporary files, or other ephemeral data
15 that are difficult to preserve without disabling the operating system.
- 16 c. On-line access data such as temporary internet files, history, cache, cookies,
17 and the like.
- 18 d. Data in metadata fields that are frequently updated automatically, such as last-
19 opened dates (see also Section (E)(5)).
- 20 e. Back-up data that are substantially duplicative of data that are more
21 accessible elsewhere, including backup systems and/or tapes used for disaster
22 recovery.
- 23 f. Server, system or network logs.
- 24 g. Data remaining from systems no longer in use that is unintelligible on the
25 systems in use.
- 26 h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from
 mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), provided
 that a copy of all such electronic data is routinely saved elsewhere (such as on
 a server, laptop, desktop computer, or "cloud" storage).
- i. Social media data.
- j. Dynamic fields of databases or log files that are not retained in the usual course
 of business.

1 **D. Privilege**

2 1. Privilege Log. A producing party shall create a privilege log of all documents
 3 fully withheld from production on the basis of a privilege or protection, unless otherwise
 4 agreed or excepted by this Agreement and Order. Privilege logs shall include a unique
 5 identification number for each document and the basis for the claim (attorney-client privileged
 6 and/or work-product protection). For ESI, the privilege log may be generated using available
 7 metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title and
 8 date created. Should the available metadata provide insufficient information for the purpose
 9 of evaluating the privilege claim asserted, the producing party shall include such additional
 10 information as required by the Federal Rules of Civil Procedure. Privilege logs will be
 11 produced to all other parties no later than 60 days after delivering a production or no later than
 12 30 days before the deadline for filing motions related to discovery, whichever comes first.

13 2. Redactions need not be logged so long as the basis for the redaction is clear on
 14 the redacted document

15 3. With respect to privileged or work-product information generated after the
 16 filing of the complaint, parties are not required to include any such information in privilege
 17 logs.

18 4. Activities undertaken in compliance with the duty to preserve information are
 19 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

20 5. Pursuant to Fed. R. Evid. 502(d), the production of any documents,
 21 electronically stored information (ESI) or information, whether inadvertent or otherwise, in
 22 this proceeding shall not, for the purposes of this proceeding or any other federal or state
 23 proceeding, constitute a waiver by the producing party of any privilege applicable to those
 24 documents, including the attorney-client privilege, attorney work-product protection, or any
 25 other privilege or protection recognized by law. This Order shall be interpreted to provide the
 26 maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b)

1 do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to
2 conduct a review of documents, ESI or information (including metadata) for relevance,
3 responsiveness and/or segregation of privileged and/or protected information before
4 production. Information produced in discovery that is protected as privileged or work product
5 shall be immediately returned to the producing party.

6 5. Nothing in this Agreement shall be interpreted to require disclosure of
7 information protected by the attorney-client privilege, work-product doctrine, or any other
8 applicable privilege or immunity. The parties do not waive objections to the production,
9 discoverability, admissibility, or confidentiality of documents and ESI.

10 6. The entry of this ESI Order does not, on its own, obligate Defendant to produce
11 software code, software components, game logic, operating systems, algorithms or other means
12 for computation or operation of a game or gaming platform, which shall be subject to separate
13 discovery requests and the terms of the Protective Order entered or to be entered in this matter,
14 with all objections reserved.

15 **E. ESI Discovery Procedures**

16 1. On-site inspection of electronic media. Such an inspection shall not be
17 permitted absent a demonstration by the requesting party of specific need and good cause or
18 by agreement of the parties.

19 2. Search methodology. The parties shall timely attempt to reach agreement on
20 appropriate search terms, or an appropriate computer or technology-aided methodology, before
21 any such effort is undertaken. The parties shall continue to cooperate in revising the
22 appropriateness of the search terms or computer- or technology-aided methodology. In the
23 absence of agreement on appropriate search terms, or an appropriate computer- or technology-
24 aided methodology, the following procedures shall apply:

25 a. Prior to running searches, a producing party shall disclose the search
26 terms or queries, if any, and methodology that it proposes to use to locate ESI likely to contain

1 discoverable information. The parties shall meet and confer to attempt to reach an agreement
2 on the producing party's search terms and/or other methodology.

3 b. Upon reasonable request, a party shall also disclose information relating
4 to network design, the types of databases, database dictionaries, the access control list and
5 security access logs and rights of individuals to access the system and specific files and
6 applications, the ESI document retention policy, organizational chart for information systems
7 personnel, or the backup and systems recovery routines, including, but not limited to, tape
8 rotation and destruction/overwrite policy.

9 c. After disclosure, the parties will engage in a meet and confer process
10 regarding additional terms sought by the non-producing party, if any.

11 d. The following provisions apply to search terms / queries of the
12 requesting party. Focused terms and queries should be employed; broad terms or queries,
13 such as product and company names, generally should be avoided. A conjunctive
14 combination of multiple words or phrases (e.g., "computer" and "system") narrows the search
15 and shall count as a single search term. A disjunctive combination of multiple words or phrases
16 (e.g., "computer" or "system") broadens the search, and thus each word or phrase shall count
17 as a separate search term unless they are variants of the same word. The producing party may
18 identify each search term or query returning overbroad results demonstrating the overbroad
19 results and a counter proposal correcting the overbroad search or query.

20 e. The producing party shall search both non-custodial data sources and
21 ESI maintained by the custodians identified.

22 3. Format.

23 a. ESI will be produced to the requesting party with searchable text, in a
24 format to be decided between the parties. Acceptable formats include, but are not limited to,
25 native files, multi-page TIFFs (with a companion OCR or extracted text file), single-page
26 TIFFs (only with load files for e-discovery software that includes metadata fields identifying

1 natural document breaks and also includes companion OCR and/or extracted text files), and
2 searchable PDF.

3 b. Unless otherwise agreed to by the parties, files that are not easily
4 converted to image format, such as spreadsheet, database and drawing files, should be
5 produced in native format.

6 c. Each document image file shall be named with a unique Bates Number
7 (e.g. the unique Bates Number of the page of the document in question, followed by its file
8 extension). File names should not be more than twenty characters long or contain spaces. When
9 a text-searchable image file is produced, the producing party must preserve the integrity of the
10 underlying ESI, i.e., the original formatting, the metadata (as noted below) and, where
11 applicable, the revision history.

12 d. The parties shall produce their information in the following format:
13 single-page images and associated multi-page text files containing extracted text or with
14 appropriate software load files containing all requisite information for use with the
15 document management system (e.g., Concordance®, NextPoint®, or Summation®), as agreed
16 to by the parties.

17 e. If a document is more than one page, the unitization of the document
18 and any attachments and/or affixed notes shall be maintained as they existed in the
19 original document.

20 4. De-duplication. The parties may de-duplicate their ESI production across
21 custodial and non-custodial data sources after disclosure to the requesting party.

22 5. Metadata fields. If the requesting party seeks metadata, the parties agree that
23 only the following metadata fields need be produced: document type; custodian and duplicate
24 custodians; author/from; recipient/to, cc and bcc; title/subject; attachment/document family
25 information; file name and size; original file path; date and time created, sent, modified and/or
26 received; and hash value. The list of metadata type is intended to be flexible and may be

1 changed by agreement of the parties, particularly in light of advances and changes in
2 technology, vendor, and business practices.

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4 **SO STIPULATED:**

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6 DATED: July 24, 2023.

ARETE LAW GROUP PLLC

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15 DATED: July 24, 2023.

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Attorneys for Defendant Blue Water Glass,
Inc.

ORDER

Based on the foregoing stipulation, IT IS SO ORDERED.

DATED this 10th day of August, 2023.

Barbara Rothstein

Barbara Jacobs Rothstein
U.S. District Court Judge

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